

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
 725 FRONT STREET, SUITE 300
 SANTA CRUZ, CA 95060
 (831) 427-4863

Th6c

Filed:	07/30/01
49th day:	09/17/01
49-Day Waiver:	08/21/01
Staff:	SAM-SC
Staff report:	02/14/02
Hearing date:	03/07/02

STAFF REPORT: APPEAL

SUBSTANTIAL ISSUE DETERMINATION/ DE NOVO FINDINGS

Local government.....Monterey County

Local DecisionResolution 01035, Approved with conditions (see Exhibit D)

Appeal NumberA-3-MCO-01-071

Applicant.....Sea Rock L.L.C.

AgentJed Butler

AppellantsCommissioners Sara Wan and John Woolley

Project location.....105 Highway 1, west of Highway 1, Carmel Highlands, Monterey, APN# 241-111-001, Carmel Area of Monterey County (see Exhibits A, B and C).

Project descriptionAn underground tunnel from a basement boiler room of an existing house to provide private beach access; construct and repair stone retaining walls; 193 cubic yards of grading to excavate tunnel; and an exception to 30% slope limit for tunnel exit and to construct a retaining wall. (See Exhibit D).

File documents.....County coastal permit file PLN990459, including *Carmel Area Land Use Plan* and *Monterey County Coastal Implementation Plan* (Title 20 of County Code).

Staff recommendation ...**Project raises a Substantial Issue; denial of *de novo* permit application.**

Summary of Staff Recommendation:

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal has been filed, and that the subsequent permit be **denied** for the project as described herein.

The applicant proposes to drill and/or blast a private access tunnel through a fractured, granitic coastal bluff to reach the small, private pocket beach at the bottom of the bluff. Rock excavated from the tunnel will be used to construct and repair stone retaining walls on the property. The project is not consistent with the Monterey County Local Coastal Program, which does not allow new development to



California Coastal Commission
March 2002 Meeting in Monterey

Staff: SAM Approved by:

C:\DOCUME~1\mfrum\LOCALS~1\Temp\A-3-MCO-01-071 Searock Tunnel 02.14.02.doc

unnaturally alter the shoreline without a need to protect existing development from shoreline hazards, and which prohibits the creation of new hazards.

As designed, the project also does not provide adequate protection of adjacent environmentally sensitive habitat areas. Because of these fundamental LCP inconsistencies, staff recommends denial of the project in a *de novo* hearing.

Staff Report Contents

Summary of Staff Recommendation:	1
I. Local Government Action	3
II. Summary of Appellants' Contentions	3
III. Standard of Review for Appeals	3
IV. Staff Recommendation on Substantial Issue	4
V. Staff Recommendation on De Novo Permit	4
VI. Recommended Findings and Declarations	5
A. Project Description and Location	5
B. Analysis of Appeal Issues	6
1. Geologic Hazards	6
A. Appellant's Contentions	6
B. Local Coastal Program Provisions	7
C. Local Government Action	7
D. Substantial Issue Analysis and Conclusion	8
2. Environmentally Sensitive Habitat Areas	10
A. Appellant's Contentions	10
B. Local Coastal Program Provisions	11
C. Local Government Action	11
D. Substantial Issue Analysis and Conclusion	12
C. De Novo Coastal Permit Findings	13
E. California Environmental Quality Act (CEQA)	15
IV. Exhibits	
A. Regional Location Map	
B. Project Vicinity Map	
C. Assessors Parcel Map	
D. County Resolution 01035	
E. Site Plans	
F. Appellants' Contentions	
G. Photographs of Site	



I. Local Government Action

Monterey County Planning Commission, in Resolution 01035, approved a coastal development permit on APN 241-111-01 for an underground tunnel from the basement boiler room of an existing house to provide private beach access; the construction of two new retaining walls and repair of existing retaining walls using rock excavated from the tunnel; and 193 cubic yards of grading to excavate the tunnel. The action also included a variance to allow an exception to the 30% slope limit for construction of the tunnel exit and to reconstruct a retaining wall (See Exhibit D for details).

II. Summary of Appellants' Contentions

The appellants, Commissioners Wan and Woolley, have appealed the final action taken by Monterey County Planning Commission (Resolution 01035), on the basis that approval of the project is inconsistent with policies of the Monterey County Local Coastal Program with respect to geologic hazards, environmentally sensitive habitat, and landform alteration. The complete text of the appellants' contentions can be found in Exhibit F.

III. Standard of Review for Appeals

Coastal Act section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because it is located between the first public road and the sea.

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program in order to approve a coastal development permit for the project. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter Three of the Coastal Act, if the project is located between the first public road and the sea, which is the case with this project.



IV. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that **a substantial issue** exists with respect to the grounds on which the appeals were filed pursuant to Coastal Act Section 30603.

MOTION: Staff recommends a “**NO**” vote on the following motion:

“I move that the Commission determine that Appeal No. A-3-MCO-01-071 raises **no** substantial issue with respect to the grounds on which the appeal has been filed.”

A majority of the Commissioners present is required to pass the motion, failure of the motion, as recommended by staff will result in Commission jurisdiction over the project and adoption of the following findings.

RESOLUTION TO ADOPT SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-3-MCO-01-071 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.

V. Staff Recommendation on De Novo Permit

The staff recommends that the Commission, after public hearing **deny** the Searock L.L.C. coastal development permit.

MOTION: Staff recommends a “**No**” vote on the following motion:

“I move that the Commission **APPROVE** coastal development permit A-3-MCO-01-071, as submitted.

A majority of the Commissioners present is required to pass the motion. A no vote will result in the adoption of the following resolution and findings:

RESOLUTION:

The Commission hereby **denies** a permit for the proposed development as conditioned below, on the grounds that the development will not conform with the policies of Chapter 3 of the Coastal Act. Approval of the permit will not comply with the California Environmental Quality Act (CEQA) because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.



VI. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Description and Location

The project site is the historically significant James House, located at 105 Highway 1, westerly of Highway 1, Carmel Highlands, in Monterey County just south of Point Lobos State Reserve, APN 241-111-001 (see Exhibits A, B and C). This parcel is located in an area designated for Low-Density Residential use. The areas immediately surrounding this parcel are the California Sea Otter State Game Refuge and Pacific Ocean to the west, and other residential uses to the north, east and south.

As approved by the County, the proposed project includes excavation and construction of an underground tunnel to provide private beach access from the basement boiler room of an existing house, construction of two new retaining walls, repair of existing retaining walls, 193 cubic yards of grading to excavate the tunnel and an exception to 30% slope limit for tunnel exit and to reconstruct a retaining wall. The stairway would be tunneled through the fractured, granitic bedrock of the cliff upon which the house sits. The lower end of the tunnel would be an opening in the cliff face, on the beach, constructed to look like a sea cave.

Material excavated from the tunnel would be used to construct two new retaining walls and to repair existing walls located on the property. Excavated rock and rubble would be transported from the work area to the top of the cliff with a bucket and cable system. (See Exhibit E, Page 2)

The tunnel would have electric lights, with the light at the bottom of the tunnel being placed 10 feet in from the entrance to prevent light from reaching the beach area. The lower door would be placed approximately six feet back from the entrance to the tunnel so it is not readily visible from the beach and/or ocean.

Commission staff, the staff geologist, conducted a field visit to the site July 16, 2001, to observe the granitic bedrock of the bluff and the existing access stairway (See Exhibit G, Page 2). The stairway, which pre-dates the Coastal Act, is not visible from Highway 1, or from the pulloff located immediately south of the property, however, it is visible from the ocean. The stairs were being used to provide access to the small, private, pocket beach, but currently do not reach the beach and provide private visual access only. In the past, the stairway has provided physical access all the way to the beach, and it is typically damaged or washed away during winter storms. According to the applicant, it has been rebuilt in the past numerous times. The only other access to this beach is from the ocean side.



B. Analysis of Appeal Issues

1. Geologic Hazards

A. Appellant's Contentions

Appellants Wan and Woolley contend in part that:

This project is development in a high geologic hazard area, and therefore needs to be carefully regulated to minimize the risk to property and damage to the natural environment. In particular, this area should be considered unsuitable for the proposed development because it is located in a high hazard area due to the highly fractured granitic bedrock through which the tunnel would be constructed. The project would cause significant damage to the natural environment.

The project... consists of construction that may alter natural shoreline processes, specifically erosion, and it is not required for the protection of the existing residence. It is likely that the rate of erosion would increase due to wave impact and storm surge once an opening is made in the cliff face, potentially creating the need for future shoreline protection.

Although a geotechnical report was prepared, it does not adequately describe the geologic conditions of the bluff, such as presence, number and extent of fractures. It does not state what the impact of construction activity will be on the stability of the site and adjacent areas. Evaluation of the structural integrity of the bedrock with respect to its highly fractured nature is important in this instance, as the construction activity could increase the geologic instability of the bedrock, and severely impact the stability of the bluff. The geologic report also does not address the potential future erodibility of the opening of the sea cave, which would be located in an area susceptible to strong storm surges and increased rates of erosion.

...Construction of the tunnel and cave entrance is not essential to protect the existing residential development, and may even require additional shoreline alteration to protect both cave and residence in the future....

Although the project is designed to prevent the deposition of sediment during the construction process, there are no mitigations included to prevent deposition of sediment in the future. An unstable bluff would increase the possibility of sediment deposition, as well as increased erosion rates experienced at the mouth of the new sea cave.



B. Local Coastal Program Provisions

The following policies of the Carmel Area Land Use Plan address geologic hazards and landform alteration:

LUP Policy 2.7.3.1. *All development shall be sited and designed to minimize risk from geologic, flood, or fire hazards. Areas of a parcel which are subject to high hazard(s) shall generally be considered unsuitable for development...*

LUP Policy 2.7.2 *Land uses and development in areas of high geologic, flood, and fire hazard shall be carefully regulated through the best available planning practices in order to minimize risks to life and property and damage to the natural environment*

LUP Policy 2.7.4.10. *Revetments, groins, seawalls, or retaining walls, and other such construction that alters natural shoreline processes shall be permitted only where required for the protection of existing development...*

LUP Policy 2.7.4.7.a., c. and e. *Where soils and geologic reports are required, they should include a description and analysis of the following items:*

For development proposed in all areas

- a. *geologic conditions, including soil, sediment, and rock types and characteristics, in addition to structural features, such as bedding, joints and faults;*
- c. *impact of construction activity on the stability of the site and adjacent area;*
- e. *potential erodibility of site and mitigating measures to be used to minimize erosion problems during and after construction (i.e., landscaping and drainage design);”*

LUP Policy 2.7.3.4. *In locations determined to have significant hazards, development permits shall include a special condition requiring the owner to record a deed restriction describing the nature of the hazard(s), geotechnical, and/or fire suppression mitigations and, where appropriate, long-term maintenance requirements.*

LUP Policy 2.2.3.7 *Structures shall be located and designed to minimize tree removal and grading for the building site and access road. Where earth movement would result in extensive slope disturbance or scarring visible from public viewing points and corridors, such activity will not be allowed. Extensive landform alteration shall not be permitted.*

C. Local Government Action

The County's action (Resolution 01035, Exhibit D) allows a coastal development permit for an underground tunnel from the basement boiler room of an existing house to provide private beach access on APN 241-111-01, construction of two new retaining walls and repair of existing retaining walls using



rock excavated from the tunnel, 193 cubic yards of grading to excavate tunnel; and a variance to allow an exception to 30% slope limit for tunnel exit and to reconstruct a retaining wall. Conditions of Approval required, among other things, that the applicant obtain a grading permit and approval of the design of lower tunnel entrance from the Director of Planning and Building Inspection. The applicant was also required by the County to implement the recommendations of the Erosion Control Plan and Geotechnical & Geological Engineering Report prepared by Grice Engineering, to abandon the currently used access trail/stairway and to monitor vibration from drilling.

D. Substantial Issue Analysis and Conclusion

To be in compliance with its Local Coastal Program, the County must find the project consistent with the above cited land use policies. As discussed below, these policies generally do not allow development in a high hazard area, particularly if the development involves extensive landform alteration, is not required to protect existing development, and does not minimize geologic risk. Therefore, the project raises a substantial issue with respect to LCP compliance.

First, the Monterey County LCP requires applicants to avoid geologically unstable areas. This parcel is located within an area designated as seismic zone VI, a high seismic geologic hazard area. However, Policy 2.7.3.1 states that “...Areas of a parcel which are subject to high hazard(s) shall generally be considered **unsuitable for development**...” (Emphasis added). Because the project area is designated as a high hazard area, and the development has not been sited to minimize risk from geologic hazards, it conflicts with LUP policy 2.7.3.1 and raises a substantial issue with respect to avoiding geologically unstable areas.

Second, and related, the proposed tunnel project conflicts with LUP policy 2.7.4.10, which states that “Revetments, groins, seawalls, or retaining walls, and other such construction that alters natural shoreline processes shall be permitted only where required for the protection of existing development...”. In other words, the only suitable development in a high hazard zone is that specifically for the purpose of protecting existing development. The proposed tunnel is not essential to protect the existing house, so there is no justifiable rationale for significantly altering shoreline processes in this location. Furthermore, opening the face of the bluff has the potential to create an otherwise unnecessary need for shoreline protection in the future. Thus, this contention raises a substantial issue with respect to alteration of shoreline processes unnecessary to protect existing development.

Indeed, the project effectively creates a sea cave, in direct antithesis to the Commission’s typical approach to managing shoreline erosion hazards along the coastline. For example, it is well established that sea caves tend to be the focus of increased coastal erosion. For this reason, they are typically of great concern when evaluating the stability of a coastal bluff. Historically, the Commission has approved a number of permits for sea cave fills throughout the state. The Central Coast area has seen numerous requests for seacave fills in Santa Cruz County (ref. CDP nos. 3-82-155/Pino; 3-90-112-G/Landess, 3-95-044-G/Lewis; and 3-97-034-DM/Smith), and one emergency permit was issued by Monterey County (3-MCO-98-133/Saunders) for seacave filling in the Yankee Point area, roughly a mile south of this project site. Additionally, applications for seacave filling have been approved for northern San Diego



County, including the Cities of Solana Beach and Encinitas (ref. CDP nos. 6-98-29/Bennett; 6-98-25/Stroben; 6-97-1646/Lingenfelder; 6-96-102/Solana Beach & Tennis Club; 6-93-181/Steinberg; and 6-92-212/Wood). Although these permits were granted for filling of sea caves in a variety of geologic formations, it has been generally recognized by the Commission that sea caves lead to instability of coastal bluffs. Thus, the project not only is not designed to protect a structure from erosion, it likely aggravates erosion risks.

Third, the LCP requires applicants to minimize geologic risk through LUP Policy 2.7.2, which establishes that development in areas of high geologic hazard shall be carefully regulated to "...minimize risks to life and property and damage to the natural environment". The County, to comply with section 20.146.80.B.1.b.2 of the County Code, did require the preparation of a Geotechnical Report. However, this proposal involves development with great potential to further decrease stability of the site, which is located in a high geologic hazard area. Creating a tunnel through granitic bedrock, the properties of which are not entirely known, cannot increase the stability of the site. Furthermore, this project creates an opening at the base of a bluff where none currently exists, and any opening at the base of a bluff will likely accelerate erosion.

The Geotechnical & Geological Engineering Report prepared for the site by Grice Engineering, Inc. in 1999 describes the site as containing granitic bedrock. Granite is typically quite resistant to erosive forces, however fractured granite erodes easily, and any opening will tend to focus erosive forces. This report does not provide enough information to determine the amount of fracturing within the cliff or the impact construction activity will have on the stability of the site and adjacent areas. The report also fails to address mitigation measures to minimize erosion problems at the mouth of the sea cave after construction, as required by LUP policy 2.7.4.7.a, c, and e, above. The project also increases the likelihood of greater erosion rates at the opening of the tunnel due to wave action, especially during winter storms. Areas where a naturally occurring sea cave has compromised the stability of the bluff typically erode at a faster rate than bluffs that have not been compromised. The proposed tunnel mouth would function like a natural sea cave, and indeed, the applicant intends to camouflage the tunnel mouth to resemble a natural sea cave.

The County also neglected to require the applicant to address potential future consequences of this development, such as failure of the coastal bluff. For example, given the unknown geologic stability of the bluff, and the presence of visibly large fractures, it is conceivable that during the tunneling process, or even years afterward, a portion of the bluff could collapse due to the combination of existing geologic stresses and stresses resulting from development. Page 1 of Exhibit G¹ is a photo taken from the ocean which shows a large fracture extending from the base of the bluff all the way to the top. This fracture is located in the same general area as the proposed tunnel. The geotechnical report never mentions this substantial fracture, nor does it address the potential for failure of the entire southern portion of the bluff that could be caused by drilling and blasting in the vicinity of this weak spot.

In addition, the geotechnical report provides a geophysical study that indicates that the upper portion of

¹ Makinson, Randell (1998); Greene & Greene: the Passion and the Legacy; Gibbs-Smith, Salt Lake City, UT.



the bluff has a much lower seismic velocity than is typical of solid, intact granite. This likely indicates that this rock is either highly weathered or highly fractured, or both. The Commission's staff geologist has reviewed the applicant's geotechnical information and visited the site, and he concludes that the bluff is highly fractured in places. Therefore, this project raises a substantial issue with respect to LUP policy 2.7.2, which requires minimization of geologic risk.

Fourth, another LUP policy, 2.7.3.4, requires a deed restriction stating the nature of the property's hazards and the appropriate long-term maintenance requirements. This should have been included in the County's findings or as a Condition of Approval, as required by this policy. As contended by the appellants, such "long-term maintenance requirements would be especially helpful in the event that increased rates of erosion did occur at the mouth of the new sea cave."

Finally, the Monterey County LCP also does allow projects to extensively alter landforms. Again, LUP Policy 2.7.2 requires projects in areas of high geologic hazard to be "carefully regulated through the best available planning practices in order to minimize . . . damage to the natural environment."² Clearly drilling and/or blasting a tunnel through the face of a shoreline cliff generates extensive landform alteration by creating a structurally weaker bluff than the one that currently exists. Additionally, creation of this landform alteration has the potential to generate further alteration of the structural landform of the coastline through potential failure of the bluff, as described below. Because the fundamental purpose of this project is to create landform alteration, and because it is not necessary to the protection of any existing development, it is inconsistent with LUP policy 2.7.2. Thus, this contention raises a substantial issue with respect to landform alteration.

Overall, the applicant has not adequately examined all possibilities for erosion and failure of the bluff, and is not in compliance with LUP policies prohibiting landform alteration and requiring avoidance of and minimization of geologic hazards. Therefore, as approved by Monterey County, the project is inconsistent with the above-referenced geologic hazard and landform alteration policies of the Monterey County LCP, and raises a substantial issue with respect to geologic hazards.

2. Environmentally Sensitive Habitat Areas

A. Appellant's Contentions

Appellants Wan and Woolley contend in part that:

The proposed tunnel has not been proven to be compatible with the long-term maintenance of the resource. Increased erosion or failure of the bluff could substantially impact the offshore kelp beds and haul-out sites, which are considered by the LCP as environmentally sensitive habitat. Development of an access tunnel through the coastal bluff is not consistent with LCP policies that deal with environmentally sensitive habitats. This project, being the first of its kind in the

² Although more aptly applied in a visual resource protection context, Carmel Area LUP Policy 2.2.3.7 also clearly states that "...Extensive landform alteration shall not be permitted."



Carmel Area, may also establish a precedent for other similar projects, which raises some concern about potential cumulative effects to environmentally sensitive habitats.

B. Local Coastal Program Provisions

The LCP defines environmentally sensitive habitats as “... areas in which plant or animal life or their habitats are rare or especially valuable due to their special role in an ecosystem” in the overview section, 2.3.1.

Examples of environmentally sensitive habitat areas listed in the Overview section 2.3.1 of the LCP, include all rocky intertidal areas, kelp beds, rookeries and haul-out sites, important roosting sites, offshore rocks, bluffs, and cliffs, and Areas of Special Biological Significance (ASBS). The project site includes all of these sensitive areas with the exception of the ASBS, which consists of the marine waters surrounding Point Lobos Reserve, located to the north of the site, immediately adjacent to it. Furthermore, the site is located within the boundaries of the California Sea Otter State Game Refuge.

The following policies of the Carmel Area Land Use Plan address environmentally sensitive habitat areas:

LUP Policy 2.3.3.2. *Land uses adjacent to locations of environmentally sensitive habitats shall be compatible with the long-term maintenance of the resource. New land uses shall be considered compatible only where they incorporate all site planning and design features needed to prevent habitat impacts and where they do not establish a precedent for continued land development which, on a cumulative basis, could degrade the resource.*

LUP Policy 2.3.4.4. Wetlands and Marine Habitats *Alteration of the shoreline, including diking, dredging and filling, shall not be permitted except where demonstrated as essential for protection of existing residential development or necessary public facilities...*

LUP Policy 2.3.4.9. Wetland and Marine Habitats *Development on parcels adjacent to intertidal habitat should be sited and designed to prevent... deposition of sediment.*

C. Local Government Action

The County's action (Resolution 01035, Exhibit D) allows a coastal development permit for an underground tunnel from the basement boiler room of an existing house to provide private beach access on APN 241-111-01, construction of two new retaining walls and repair of existing retaining walls using rock excavated from the tunnel, 193 cubic yards of grading to excavate tunnel; and a variance to allow an exception to 30% slope limit for tunnel exit and to reconstruct a retaining wall. Among other things, the conditions of approval required that development be in accordance with the Biological Report, prepared by Jeff Norman. Additional mitigations included that the applicant restrict drilling operations to the months of May through November to avoid disturbance of Southern sea otters, provide for the presence of black swifts, Yadon's rein-orchid, Pacific Grove clover and breeding harbor seals, protect Monterey pines on site, and monitor noise levels.



D. Substantial Issue Analysis and Conclusion

Consistency with the above cited land use policies is necessary for the County's approval of this project. These policies clearly require that non-resource dependent development, such as the proposed tunnel, must avoid environmentally sensitive habitat areas. Any development adjacent to environmentally sensitive habitat areas must also be compatible with the protection and long-term maintenance of these areas. The possible impacts to ESHA are broken down into two main categories: construction-related and long-term impacts.

Jeff Norman's Biological Report, dated 11/17/1999, indicates that the project site supports examples of Monterey Pine and that the "nearshore marine environment is inhabited by the Southern sea otter." It also states that swift nesting sites are present in a sea cave 50 yards west of the project site, and describes a marine mammal haul-out site, intertidal zone, and Monterey Pine habitat, but it does not mention the presence of offshore kelp beds.

The project was conditioned to restrict drilling and/or blasting to the months of May through November to lessen the potential for construction noise to impact the Southern sea otter pupping activity. Conditions of Approval also included a provision to use "noise-muffling features" such as a blanket at the cliff face, which also is intended to mitigate for harbor seals, if present. Other construction mitigation measures include pre-construction surveys to determine the presence of black swifts, breeding and/or pupping harbor seals, Yadon's rein-orchid, and Pacific Grove Clover, with corresponding delays in construction or fencing of areas if said species are found.

While the County has accounted for construction noise, as well as the possibility that protected plants and animals may be found at the site, the mitigations do not address other potential construction impacts. The presence of people and machinery on the beach every day for six months, or failure of the rock removal system resulting in rocks and or drilling liquid falling to the beach, could have significant impacts. These possibilities were not addressed by either the Biological Report or the County.

The County also failed to require the applicant to address potential future impacts of construction to the natural environment. As described above, possible failure of the bluff due to existing geologic stresses and those caused by drilling/blasting the tunnel, would be likely to impact rocky intertidal habitat and offshore kelp beds by covering them with debris.

Potential collapse of the bluff conflicts with LUP policy 2.3.4.9 Wetlands and Marine Habitats, which requires development adjacent to intertidal habitat to be designed to prevent deposition of sediment. In addition, as discussed previously, there are no long-term maintenance measures included in the County's findings or conditions to lessen the future erodibility of the site. These oversights could present a substantial issue with respect to LUP policy 2.3.3.2, which requires the development to be compatible with the long-term maintenance of the resource.

Another potential long-term impact to ESHA is the possibility that this alteration of the shoreline, through increased erosion of the mouth of the tunnel or collapse of the bluff, will create the need for future shoreline alteration to protect the existing residence. LUP policy 2.3.4.4 is closely related to



geologic hazard policy 2.7.4.10 in that they both limit the alteration of the shoreline to instances where it is essential to protect existing development, however Policy 2.3.4.4 concerns physical alteration of the shoreline, rather than shoreline processes.

The creation of a tunnel in a coastal bluff where there currently is not necessary to protect the existing development, and may even disrupt the shoreline processes enough to necessitate future shoreline alteration. Therefore, this project raises a substantial issue with respect to limiting physical alteration of the shoreline.

This is also the first project of its kind proposed in the Carmel Area, and all of Monterey County. Therefore, the possibility exists for this project to set a precedent and create the potential for cumulative impacts, conflicting with LUP policy 2.3.3.2 which requires that new development “not establish a precedent for continued land development which, on a cumulative basis, could degrade the resource.”

While it is not likely that the majority of Monterey County’s coastal residents will propose similar projects, the potential for numerous similar projects does exist, which raises concern about the likelihood for cumulative impacts to environmentally sensitive habitat. In any event, the proposed tunnel is not consistent with the long-term maintenance required by LUP policy 2.3.3.2 and therefore raises a substantial issue with respect to long-term maintenance of the resource.

The short-term construction impacts of the tunnel, and the setting of precedence may not provide the strongest basis for a substantial issue argument. However, the LCP requires development adjacent to ESHA to be consistent with long-term maintenance of the resource. The fact that the County approved non-resource dependent development in an area adjacent to five different types of ESHA without fully considering all of its potential long-term impacts to ESHA does provide that basis. Because the County did not require or have enough information about potential long-term impacts to make a good judgment regarding this project, a substantial issue is raised with regard to long-term protection of coastal resources.

C. De Novo Coastal Permit Findings

The applicant, Searock L.L.C., proposes to drill and/or blast a tunnel through a coastal bluff to provide access to a private pocket beach and to use the rock excavated from the tunneling process to build and repair retaining walls on the property. As discussed in the Substantial Issue findings above, directly incorporated into these *de novo* findings by reference, this project is fundamentally inconsistent with the Monterey County LCP and cannot be approved.

As established in the above findings, the project is located on a coastal bluff, an area of high geologic hazard. The applicant has not demonstrated that the tunnel can be drilled into the fractured bedrock without further compromising the structural integrity of the bluff and increasing the risk from geologic hazard. While additional geologic testing may fulfill the requirements of LCP policies 2.7.4.7.a, c, and e, it is not likely to guarantee that the project will contribute to the stability of the existing bluff. Therefore, the fundamental aspects of this development are inconsistent with LCP policies 2.7.2 and 2.7.3.1, which



require development to minimize geologic risks and do not generally allow development in areas subject to high hazards, and consequently must be denied.

Additionally, and more fundamentally, the above findings also show that the project conflicts with LCP policies 2.7.4.10 and 2.3.4.4, which regulate development that alters shoreline processes and development that physically alters the shoreline respectively. Both of these policies state that such development shall only be permitted where it is necessary to protect existing development. It has been determined that the creation of a sea cave where there was previously a solid coastal bluff alters both the physical properties of the shoreline and its processes, and that providing private beach access is not necessary to protect the existing development. Furthermore, such shoreline alteration conflicts with LUP policy 2.7.2 which requires that projects be well-regulated to minimize damage to the natural environment. Clearly a project with no necessary shoreline protection function, in a high hazard area, requiring extensive landform alteration, is not consistent with the fundamental principles embodied in the geologic hazards policies of the LCP. Overall, this project is not in conformance with LCP policies 2.7.4.10, 2.7.2 and 2.3.4.4 pertaining to geologic hazard and protection of the natural environment, and therefore must be denied.

With respect to ESHA, the above findings establish that the tunnel site is adjacent to many different types of environmentally sensitive habitat areas; rocky intertidal habitat, rookeries, roosting and haul-out sites, and kelp beds, as well as the California Sea Otter State Game Refuge and nearby Areas of Special Biological Importance. This project has the potential, through catastrophic failure of the bluff, to create significant impacts to these areas. The nature of this project is inconsistent with LCP policies 2.3.3.2, which requires development to be compatible with the long-term maintenance of the resource, and 2.3.4.9, which requires development to prevent deposition of sediment, and therefore must be denied.

Alternatives

There are potentially other alternatives to drilling and/or blasting an access tunnel into bluff, such as an access stairway. According to the applicant, the existing path and stairs pre-date the Coastal Act, and have been rebuilt in the past on an annual basis without coastal development permits. If this avenue is used to provide future access to the beach, it could possibly be done without the amount of habitat and geologic disturbance expected from the proposed tunnel.³ As such, any development to provide beach access on site should be located in the previously disturbed areas of the existing walkway. Additionally, a stairway designed to be removable from the area susceptible to storm surge is preferable, as this would prevent additional disturbance to the slope and nearshore habitat due to stairway reconstruction. It would also avoid the episodic damage to the stairs and potential for debris to enter the marine environment. Removal of invasive vegetation from the general area of the existing access pathway should also be addressed in future beach access development proposals.

³ Whether or not such a proposal requires a coastal development permit would need to be evaluated by the County pursuant to the certified Monterey County LCP.



Conclusion

This analysis has revealed fundamental inconsistencies with Monterey County LCP, as well as significant issues that were not satisfactorily addressed by the County analysis. The project as presented does not adequately address the major policy issues of maintenance of geologic stability, development in hazardous areas, development adjacent to ESHA, and landform alteration. Therefore, because the proposed tunnel project does not avoid development in a high geologic hazard area, is shoreline alteration not necessary to protect the existing residence, and will have impacts on adjacent ESHA, it is inconsistent with LCP policies designed to protect the resources found at the project site, and must be denied.

D. Public Access and Recreation Findings

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea includes a specific finding that the development is in conformance with the public access and recreation policies of chapter 3 of the Coastal Act. The project is located seaward of the first public through road, which in this area is State Highway 1. Sections 30210-14 of the Coastal Act provide for maximizing public access to the coast. In accordance with other Coastal Act policies, Section 30223 requires that upland areas necessary to support coastal recreation uses shall be reserved for such uses where feasible. Section 30212 also requires that public access from the nearest public roadway to the shoreline be provided for all new development projects except where adequate access exists nearby.

The project does not affect any existing public access in the Carmel Area. The site is located roughly 1,500 feet from the southern portion of the Point Lobos Reserve State Park and 1.5 miles to Monastery Beach and the Carmel River State Beach. Additionally, there is a visual access point adjoining the property on the southern side, which consists of a pull-off-parking area next to Highway 1. Therefore, the project is consistent with public access and recreational policies of the Coastal Act.

E. California Environmental Quality Act (CEQA)

The County determined that this permit was exempt from CEQA review. However, this report has identified and discussed certain additional potential adverse impacts (geologic hazard and ESHA issues) not fully addressed by the local government. The project as presented does not address these impacts. As designed and sited, the project would not be the least environmentally damaging feasible project that could occur on the site. Therefore, as there are additional feasible mitigation measures that would lessen any significant adverse effects on the environment within the meaning of the California Environmental Quality Act (CEQA), this application must be denied. This finding incorporates all of the previous findings in this recommendation.

